

There have been recent [reports](#) about state agencies that forbid employees from discussing climate change. Since this is obviously a restriction on speech, it's natural to wonder what the First Amendment has to say on the subject. The answer depends in large part on the kind of employee speech at issue.

Let's begin with a ban on using the term "climate change" in official state communications. That seems to be clearly constitutional under present law, because those communications are classified as governmental speech. The state has a right to control what is said in its name. So far, the only clear limitation on this principle is that the state's policy can't be religiously motivated (as with bans on teaching evolution). Maybe a ban could be attacked as unconstitutionally vague if it was phrased broadly. Academic freedom may be another limit. Whether there are any other limits is at present unclear.

Some of the state rules seem to go beyond official communications to encompass all speech in the workplace. Here, the states are on much weaker ground. Climate change is clearly a matter of public concern. [Pickering v. Board of Education](#) allows restrictions on such speech only when necessary to prevent significant interference with operations. For instance, in [Rankin v. McPherson](#), the state was not allowed to fire a civilian employee of a police department who said she was glad when President Reagan was shot. It would be difficult for a state to defend such a ban on speech about climate change on this basis.

An additional interesting question is whether the state could ban use of its email system to discuss climate change. A ban that applied only to speakers supporting climate science or advocating climate policies would be considered viewpoint based and hence hardest to defend under the [Perry test](#). A ban on the whole topic would be considered subject-matter based, which would require a less stringent justification, but even then, it is unclear whether a court would consider such a ban reasonable if discussion of similar topics is allowed. The employer might try defining the topic as non-work related and then ban all non-work related use of its email system. Many employers have such bans but they are often not seriously enforced. Enforcing such a general ban only when the speech concerns particular topics would raise the same issues as an explicit ban.

Putting aside the constitutional question, gag rules to prevent employees from discussing issues of public concern seem generally unwise, whether they come from liberals or conservatives. All the more so, of course, when employees are simply talking about scientific facts.